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Ronald G. Brock SR.

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Steve Hassid, Silicon Edge Law Group LLP
1115 1/2 YALE STREET
SANTA MONICA, CA 90403

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RONALD G. BROCK, SR.

Appeal 2009-014905
Application 09/904,741
Technology Center 3600

Before JOHN A. JEFFERY, HUBERT C. LORIN, and JOSEPH A.
FISCHETTI, *Administrative Patent Judges*.

FISCHETTI, *Administrative Patent Judge*.

DECISION ON APPEAL

The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Appellant seeks our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 1-4 and 41-45 and 54-57. Claims 5-17 and 51-53 are cancelled. We have jurisdiction under 35 U.S.C. § 6(b) (2002). Claims 18-40 and 46-50 are withdrawn from consideration.

SUMMARY OF DECISION

We AFFIRM-IN-PART.

THE INVENTION

Appellant claims a system and method for providing real estate information, and more particularly, to a system for providing real estate information to a computer having access to a computer communication network. (Specification 1:7-9).

Claims 1 and 41, reproduced below, are representative of the subject matter on appeal.

Claim 1 (Previously presented): An interactive, computer-implemented system for providing a comparison of at least two of a plurality of real estate properties, said system comprising:
a real estate database storing data for each of said plurality of real estate properties, said data comprising at least one of address data, ownership data, physical characteristics data, size data, geographic location data and monetary value data, wherein said real estate database further stores an actual monetary value for each of said plurality of real estate properties, a plurality of monetary value-affecting characteristics generally associated with real estate properties, and a standard monetary value for each of said plurality of

monetary value-affecting characteristics;

an interface system for enabling a system user to input a request for a comparison of at least a portion of said data of said at least two of said plurality of real estate properties, said request comprising information sufficient to identify said at least two of said plurality of real estate properties, wherein said request comprises the selection of a physical rating parameter and/or a location rating parameter;

a processor which uses said information to obtain said comparison of at least a portion of said data of said at least two of said plurality of real estate properties, wherein said processor is configured to provide a physical rating for each of said at least two of said plurality of real estate properties, wherein said processor is configured to provide a location rating for each of said at least two of said plurality of real estate properties, and wherein said processor is configured to use at least one of said standard monetary values for each of said plurality of monetary value-affecting characteristics to obtain a market standard monetary value for each of said at least two of said plurality of real estate properties; and

a delivery system for providing to said system user said comparison of at least a portion of said data of said at least two of said plurality of real estate properties, wherein said comparison comprises, for each of said at least two of said plurality of real estate properties, said physical rating, said location rating, said actual monetary value, and said market standard monetary value; and wherein said physical rating parameter and/or said location rating parameter are used to select the at least two of said plurality of real estate properties provided in said comparison.

Claim 41 (Previously presented): An interactive, computer-implemented system for providing a physical rating of a real estate property, said system comprising:

a database storing: a plurality of physical factors for

each of a plurality of real estate properties, a weight indicator associated with each of said plurality of physical factors; and a factor score associated with each of said plurality of physical factors;

an interface system for enabling a user to input a request for a physical rating for one of said plurality of real estate properties, said request comprising information sufficient to identify said one of said plurality of real estate properties in said database;

a processor which uses said information to obtain a physical rating for said one of said plurality of real estate properties, wherein said processor is configured to obtain said physical rating by dividing said plurality of physical factors into a plurality of sets each having a number of factors, said number comprising at least two, wherein said weight indicators of each of said plurality of factors in said each of said plurality of sets are equal; and

a delivery system for providing said physical rating to said user.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability¹:

Apgar	US 5,680,305	Oct. 21, 1997
Dugan	US 5,857,174	Jan. 5, 1999
Khedkar	US 6,609,188 B1	Aug. 19, 2003

¹ Appellant cancelled claims 6-17 and 51-53 in a Supplemental Brief dated February 6, 2009. Claims 6-17 and 51-53 were rejected under 35 U.S.C. § 35 U.S.C. § 101. Accordingly, the Examiner withdrew the rejection of these claims (Answer 3).

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“Three More Companies Become Weblink Wireless Enterprise Solutions Partners; Datamatic, LynkUs and VoiceLink Join 19 Other Companies in Wireless Data Effort” PR Newswire. New York, May 4, 2000. pg. 1.

The Examiner rejected claims 1, 2, 4 and 57 under 35 U.S.C. §103(a) over Dugan in view of Khedkar.

The Examiner rejected claims 41-45 and 54-56 under 35 U.S.C. §103(a) as unpatentable over Dugan in view Apgar.

The Examiner rejected claim 3 under 35 U.S.C. §103(a) as unpatentable over Dugan in view of Three More Companies.

ISSUES

Has Appellant shown that the Examiner erred in rejecting claims 1, 2, 4 and 57 on appeal as being unpatentable under 35 U.S.C. § 103(a) over Dugan in view of Khedkar on the grounds that a person with ordinary skill in the art would understand that market standard monetary value is a form of standardization as found in real estate comparables used to establish pricing for properties in a given area?

Has Appellant shown that the Examiner erred in rejecting claims 41-45 and 54-56 on appeal as being unpatentable under 35 U.S.C. § 103(a) over Dugan in view of Khedkar on the grounds that a person with ordinary skill in the art would understand that Dugan discloses equal weight indicators of each of a plurality of factors when the factors have different ranges?

FINDINGS OF FACT

We find the following facts by a preponderance of the evidence:

1. Appellant's Specification does not specifically define the term "market standard monetary value", nor does it utilize the term contrary to its customary meaning.
2. The Specification only describes the term "market standard monetary value" in terms of examples. (Specification 18:6-30).
3. The ordinary and customary definition of the term "standard" as defined by Merriam Webster's Collegiate Dictionary (10th ed.) is:
"4 : something set up and established by authority as a rule for the measure of quantity, weight, extent, value, or quality." (www.merriam-webster.com/dictionary/standard)
4. The examples given by the Specification (FF 2) show a property value rating system which produces a monetary adjustment by adding or subtracting values of the subject property based on property characteristics which affect the effective rent paid by the user. For example, if a fireplace is included as part of the property, a \$15 increase adjustment is given against the cost of the rent, whereas, if for example, the sewer charges are not included, this charge is added to the effective rent value. (Specification 18:6-30).
5. The Examiner found that Dugan does not specifically disclose a standard monetary value but Khedkar does in that "(FIG. 11 shows possible adjustments 210 (in thousands of dollars to a comparable's price, as

a function of the different number of bathrooms between the subject and comparable property...')". (Answer 5).

6. Dugan discloses *weight indicators of each of said plurality of location factors* which uses an Idea Point System (IPS) which assigns, *inter alia*, a range 1-10 for location; a range of 1-15 for surrounding neighborhood; a range of 1-25 for improvements, a range of 1-25 for utility and appeal. (Col. 7, ll. 20-33).

7. Khedkar discloses:

Any difference between the subject property and comparable property that causes a comparable to be more or less valuable than the subject property produces an adjustment. If the comparable is superior to the subject property, the comparable's price is decreased. If the comparable is inferior to the subject property, the comparable's price is increased.... For example, FIG. 10 illustrates sample adjustment rules 200, which are triggered by differences between the subject property's and comparable's attributes. FIG. 11 shows possible adjustments 210 (in thousands of dollars) to a comparable's price, as a function of the different number of bathrooms between the subject and the comparable property. ... The Living Area 222 has been adjusted by $(22 + (175000 \times 0.00003)) = \27.25 ... The subject property has a Pool 236 and the comparable does not thus requiring an adjustment of \$10,000 to the sales price of the comparable.

(Col. 10, ll. 23-59).

ANALYSIS

We affirm the rejection of claims 1-4, and reverse the rejection of

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claims 41-45 and 54-57.

Appellant argues that the claimed term:

... [M]arket standard monetary value does not depend upon the selection of any particular property (subject property or otherwise). In fact, in the present invention, market standard value does not in any way depend on the particular property selected. Instead, the market standard value is determined by adjusting the recited "actual monetary value" by the "standard monetary values", which are not dependent upon any particular subject property.

(Appeal Br. 7).

We find Appellant's arguments unpersuasive for the following reasons:

Preliminarily, we note that Appellant's Specification does not specifically define the term "market standard monetary value", nor does it utilize the term contrary to its customary meaning (FF 1). The Specification only describes the term "market standard monetary value" in terms of examples. (FF 2, 4). We find that the ordinary and customary definition of the term "standard" is: something set up and established by authority as a rule for the measure of quantity, weight, extent, value, or quality. (FF 3).

The Examiner found that Khedhar discloses a standard monetary value in that Khedhar discloses providing adjustments to a property using comparable rules. (FF 5, 7).

Appellants however argue that "... it should be appreciated that Khedkar teaches an adjustment for a property that varies in each scenario

depending on the selection of the subject property, which does not provide a standard monetary value.” (Appeal Br. 7).

We disagree with Appellant because, Appellant’s arguments are not based on limitations appearing in the claims in that claim 1 does not specify that the market standard monetary value is independent of the selection of any particular property as argued by Appellant. Limitations appearing in the specification but not recited in the claim are not read into the claim. *E-Pass Techs., Inc. v. 3Com Corp.*, 343 F.3d 1364, 1369 (Fed. Cir. 2003).

In addition, we find that Khedhar discloses measuring property values using comparable rules which, for example, adjust upwards of \$10K if the property includes a pool (FF 7). Thus, Khedhar discloses adding or subtracting values for a given property based on the property characteristics referenced to a rule based comparable.

Appellant’s arguments to the same deficiencies in Dugan, are likewise unpersuasive because Appellant is attacking the Dugan reference individually when the rejection is based on a combination of references and the Examiner found that Khedhar and not Dugan discloses the argued feature (FF 5). *See In re Keller*, 642 F.2d 413, 426 (CCPA 1981); *In re Young*, 403 F.2d 754, 757-58 (CCPA 1968).

We also affirm the rejections of dependent claims 2-4 since Appellant has not challenged such with any reasonable specificity (see *In re Nielson*, 816 F.2d 1567, 1572 (Fed. Cir. 1987)).

Independent claims 41 and 54 each include the limitation of wherein *said weight indicators of each of said plurality of location factors in said each of said plurality of sets are equal*. We find that Dugan discloses *weight indicators of each of said plurality of location factors* which are not equal. Rather, Dugan uses an Idea Point System (IPS) which assigns different weight indicator ranges, *inter alia*, a range 1-10 for location; a range of 1-15 for surrounding neighborhood; a range of 1-25 for improvements, a range of 1-25 for utility and appeal. The Examiner maintains that because Dugan discloses adjusting values for markets to any value, the claim requirements are met. (Answer 14-15). However, this logic does not answer the question of why it would be obvious to choose equal weight indicators as required by the claims. Accordingly, we will not sustain the rejection of claims 41 and 54.

Since claims 42-45, 55-57 depend from claims 41, 54, respectively, and since we cannot sustain the rejection of claims 41 and 54, the rejection of the dependent claims likewise cannot be sustained.

CONCLUSIONS OF LAW

We conclude the Appellant has not shown that the Examiner erred in rejecting claims 1-4, and has shown that the Examiner erred in rejecting claims 41-45 and claims 54-57.

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DECISION

The decision of the Examiner to reject claims 1-4 is AFFIRMED.

The decision of the Examiner to reject claims 41-45 and claims 54-57
is REVERSED.

AFFIRMED-IN-PART

MP

Steve Hassid, Silicon Edge Law Group LLP
1115 1/2 YALE STREET
SANTA MONICA CA 90403